

<b>Item No.</b> 21.	<b>Classification:</b> Open	<b>Date:</b> 7 December 2021	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Impact of the Building Safety Bill	
<b>Wards or groups affected:</b>		All	
<b>Cabinet Member:</b>		Councillor Stephanie Cryan, Council Homes and Homelessness	

## **FOREWORD – COUNCILLOR STEPHANIE CRYAN – CABINET MEMBER FOR COUNCIL HOMES AND HOMELESSNESS**

The Building Safety Bill follows a three-year scrutiny and public consultation process, and represents a wholesale reform of the building safety regime, in line with the recommendations of Dame Judith Hackitt's 2018 Independent Review: Building a Safer Future. The raft of new and emerging legislation post the Grenfell Fire tragedy, which killed 72 people, aims to rightly put residents and their safety at the heart of building management.

This report marks the beginning of the council's journey to meet the requirements of the new and amended legislation and we have adopted a cross council collaborative programme to ensure a robust response.

Southwark is one of the biggest landlords with buildings in scope in the UK, we are responsible for 170 in scope buildings – we must focus on these first. The report talks about how we will ensure that we have all the information we need to meet the new requirement for building safety cases, and how we will start that process through a pilot project at Andoversford Court in Peckham.

We have learnt so much from the Grenfell inquiry – including the need to listen to residents and ensure that their voices are heard on important matters of building safety, and we intend to move forward working closely with our residents.

This report asks Cabinet to approve the creation of a new Director level role within our Housing service as part of our commitment to make sure that the approach is right and that we are taking our new responsibilities very seriously.

## **RECOMMENDATIONS**

That Cabinet;

1. Notes the impact of new and emerging legislation - most notably, the Fire Safety Act and the Building Safety Bill.
2. Notes that the Building Safety Programme is underway, allowing the Council to respond to the new and emerging legislation.

3. Approves the creation of a new Assistant Director role for Building Safety, at either Grade 17 or Grade 18, subject to evaluation. This will allow for the necessary senior strategic leadership to take the Programme forward, as set out by paragraph 90.

## **BACKGROUND INFORMATION**

4. The Grenfell Fire, which took place on 14 June 2017, killed 72 people. The tragedy exposed significant failings across the system of building and managing High Rise residential buildings.
5. On 15 June 2017, the government announced the Grenfell Public Inquiry. Phase 1 of this inquiry, which was completed in 2019, looked at the events of the fire itself. Phase 2, which is ongoing, is looking at the causes of the fire. The Council's response to Phase 1 of the Grenfell inquiry recommendations was discussed by a Cabinet report in February 2020.
6. The government also announced the review of Building Regulations & Fire Safety. This was conducted by Dame Judith Hackitt. Her report, which was published in 2018, recommended a more robust approach to managing High Rise residential buildings.
7. The government accepted the recommendations of this review and they have responded with new legislation – most notably, the Fire Safety Act and the Building Safety Bill. There is a range of other new requirements too.
8. During February 2021, a Building Safety and Cladding report was taken to the Housing and Community Engagement Scrutiny Commission by the Head of Engineering. This report outlined the position of the council at the time and the actions that had been taken to date.

## **KEY ISSUES FOR CONSIDERATION**

9. This paper explains the impact of the new and emerging legislation and it discusses the Council's response to this. The paper recommends that the creation of a new Assistant Director role for Building Safety is approved by Cabinet.

## **New and Emerging Legislation**

### **The Fire Safety Act (2021)**

10. Under the existing legislation, The Fire Safety Order (2005), landlords must conduct Fire Risk Assessments (FRAs) to understand the actions and strategies required to keep their residents safe. Under the Fire Safety Order, FRAs are only required to look at the communal aspects of buildings.
11. The Fire Safety Act has received Royal Assent and it is expected that it will be implemented during 2022. Under this act, FRAs will also need to look at

the structure, the external walls (including cladding, windows, both sides of fire doors, and balconies), and the entrance doors of buildings.

12. The Fire Safety Order and the Fire Safety Act apply to any residential building with communal areas. The Council is the landlord for 45,858 homes with a communal area – this is 83.4% of its stock and 3,588 buildings.
13. To meet the requirements of the Fire Safety Act, the council will need to conduct new FRAs across its stock. This will begin with the blocks which are the highest priority: High Rise blocks. However, it will need to continue with its approach to mitigate risk and meet the requirements across the rest of its stock.
14. The council does not have the skills to conduct FRAs which meet the requirements of the Fire Safety Act. Therefore, during the short-term, it will need to use consultants to deliver these services. During the medium-term, the Council will recruit and upskill to enable it to deliver the new FRAs.

### **The Building Safety Bill**

15. The Building Safety Bill will establish a new, more stringent regulatory regime for higher-risk residential buildings. This regime will cover the life-cycle of the building, from design and construction, through to management, handover and demolition. There will be increased responsibilities for responsible persons (landlords) and tougher sanctions for those who do not meet their obligations. The Building Safety Regulator, which will sit within the Health and Safety Executive, will oversee and enforce the new regime of regulations.
16. The legislation will likely receive Royal Assent during 2022 and will be implemented from 2023/24 onwards.
17. The Building Safety Bill only covers High Rise residential buildings (those with a height of 7 storeys and above or 18 metres and above) The Council is the landlord for 170 of these High Rise blocks – these blocks contain 9334 homes between them. This is a greater number than many other landlords and higher than any other social landlord across England.
18. The Building Safety Bill has significant implications for the Council. The Council will need to acquire Building Safety Certificates for its High Rise blocks – this will require the collation of Building Safety Cases. These cases are the collection of relevant data and documents relating to the safety of the building, this includes data that captures the views of the residents and it will also need to cover the management of the building too, e.g. the skills of those working on the block.
19. There are also requirements about new roles and more stringent competence requirements. Many of these relate to Asset Management, but other service areas may also be affected, such as Homeownership

Services. The Bill also requires the council to decide which officers will be the Accountable Person and the Principal Accountable Person (these are the persons who are legally accountable for the Council meeting the relevant requirements).

20. Other significant implications include: improving the ways that the Council holds, updates and shares data relating to the safety of its High Rise blocks; delivering a resident engagement strategy across the borough and for each High Rise block; and, collecting the Building Safety Charge - a charge that landlords will need to collect from homeowners to cover some of the costs of their new responsibilities. The cost of this charge will be determined at a later date.

### **Other Requirements**

21. The council must meet other new requirements too, the details of these are discussed in paragraphs 60-64.
22. It should be noted that any changes add to existing Health and Safety legislation, which outlines the duty of care that landlords have towards their residents.

### **The Council's Response**

23. Before discussing the council's response to the new and emerging legislation, it should be noted that the council is compliant with existing legislation.

### **Building Safety Programme**

24. The council has responded to the new requirements with the Building Safety Programme. This Programme has 12 workstreams – each of these is delivered by the relevant department. An operational group is used to facilitate collaboration between the leads of the different workstreams. The workstreams and the operational group report to a Strategic Board, which is chaired by the Strategic Director for Housing and Modernisation.
25. The Programme also includes a Partnership Board – this is a 6 weekly meeting with the Council's partners at the London Fire Brigade (LFB), the Department for Levelling Up, Housing and Communities (DLUHC), and the Health and Safety Executive (HSE). These meetings assist the council to develop its understanding of the upcoming legislation and to raise concerns about the challenges being imposed.
26. The sections below discuss the council's responses to the new legislation and other requirements. The most significant of these is the Priority Surveying Programme.

### **Priority Surveying Programme**

27. 'The Council Stock – Surveying and Remediation' workstream, which is led

by Asset Management, is working to deliver the Priority Surveying Programme. Without this Programme, the council would be unable to meet the requirements of the new legislation.

28. The Priority Surveying Programme will be used to survey its 170 High Rise blocks. These are the blocks within the scope of the Building Safety Bill and they are a high priority for the Fire Safety Act too.
29. The surveys will provide FRAAs (Fire Risk Assessment and Appraisals) and an assessment of the Building Safety Case (including stock condition surveys). These will help the Council to meet the requirements of the Fire Safety Act, the Building Safety Bill, and the Council's Duty of Care. Table 1 explains this further.

**Table 1**

<b>Requirement</b>	<b>How do the surveys meet this?</b>
<b>The Fire Safety Act</b>	The FRAA covers the additional and requirements of the FSA – the structure, the external walls (including cladding, windows, both sides of fire doors, and balconies), and the entrance doors of buildings.
<b>The Building Safety Bill</b>	FRAAs bring together the relevant data for the Building Safety Case. The stock condition surveys are also needed for this.  The FRAA also determines the risk and the fire strategy needed for the building. Therefore, they will show that the Council's high rise residential buildings are safe for residents. This will also be needed for the Building Safety Case.
<b>Duty of Care</b>	FRAAs also include checks of compartmentation, this is not a requirement of the new legislation, but the Council has determined it is necessary to meet its Duty of Care.

30. The Priority Surveying Programme will impact residents across the borough and it is essential to minimise disruption, make the experience as positive as possible for people, and deliver value for money. Therefore, the Council is conducting Pilot Surveys at Andoversford Court, 88, Bibury Close, Gloucester Grove, Peckham, SE15 6AE.
31. The Pilot Surveys will give the council chance to learn about its approach and improve it ahead of the Priority Surveying Programme. This learning will relate to the surveys themselves, but it will cover other aspects too, such as resident engagement, working with Tenant Management Organisations, and roles and responsibilities within the Asset Management Division. The Pilot Surveys commenced during November 2021 and are expected to be completed by March 2022.

32. The Health and Safety Executive (HSE) will be checking Building Safety Cases from April 2024 onwards. The Council will need 12 months for the Priority Surveying Programme and a further 12 months to collate its Building Safety Cases. Therefore, the Priority Programme will need to commence by March 2022.
33. If the council does not start the Programme by this date, it will not have time to collate the Safety Cases and it will breach the requirements of the new legislation. This will have significant reputational damage and financial implications for the Council and those officers who hold the positions of Accountable Person and Principal Accountable Persons.
34. The response to the surveys will include remediation works. The FRAAs will show which works are needed and these would be incorporated into the Quality Homes Investment Plan (QHIP).
35. The costs of the Pilot Surveys and Priority Surveying Programme will be significant
36. The Pilot Surveys will include an FRAA (as discussed above) and a Building Information Modelling (BIM). BIM is used to generate a 3D model of the building and the use of this is recommended by the Building Safety Regulator. BIM includes a digital and modern stock condition survey - this is needed for the building safety case, as discussed by Table 1. It is an aspiration of the Council for every resident to have access to data about their home – 3D BIM Modelling help with the delivery of this, due to its accessibility to non-technical audiences. The use of BIM will be reviewed after the Pilot Surveys.
37. The cost of the Pilot Surveys are estimated to be £100,905. This is broken down by Table 2: the FRAA costs £24,964 and the BIM costs £75,941. The council will not be charging homeowners for the costs of the pilot surveys. The costs of the Pilot Surveys will be included within spending for the 2021/22 financial year and they will be included within the QHIP.

**Table 2**

<b>Activity</b>	<b>Cost (£)</b>
<b>FRAA</b>	24,964
<b>BIM</b>	75,941
<b>Pilot (Total)</b>	100,905

38. If the council uses BIM for the Priority Surveying Programme, it is estimated that (the surveys across the other 169 blocks) the cost of the Programme will be circa £17,000,000. This estimate is based upon the costs of the Pilot Surveys.

39. If the council does not use BIM for the Priority Programme, it will need to undertake new stock condition surveys for the 169 High Rise blocks. With this cost and the cost of the FRAAs, it is estimated that the cost of the surveys will be around £58,000 per block. Therefore, it is estimated that the cost of the Priority Programme (the surveys across the other 169 blocks), would circa £9,802,000. This estimate is also based upon the costs of the Pilot Surveys.
40. The costs for the Priority Programme without BIM have been included as a commitment in the budget challenge meetings in November 2021. If BIM is included, further discussions will be needed at budget challenge meetings and the QHIP will need some reconfiguration to meet the costs. The Council will seek to reduce the costs of BIM by developing its own capacity to deliver these.
41. Table 3 gives a breakdown of the costs, with the different options relating to BIM (the benefits of these are discussed above), the costs per block, and the costs. These costs will fall within the 2022/23 financial year.

**Table 3**

<b>Option</b>	<b>Cost per Block (£)</b>	<b>Cost across 169 blocks (£)</b>
<b>Surveys with BIM</b>	100,905	17,052,945
<b>Surveys without BIM</b>	58,000	9,802,000

42. The costs of the Priority Surveying Programme will be capitalised, as they are too significant to be accommodated by the HRA revenue account. It is possible to do this because the surveys are being used to understand which remediation works are required for the blocks. Specifically, the Priority Surveying Programme would be described as 'pre-surveys' and the costs of the Programme will be included within the future QHIP Programme.
43. The council will be able to accommodate the costs of the Priority Surveying Programme if it can charge homeowners for the surveys. If the Council did not charge any costs to homeowners then tenants would bear an unfair amount of the costs.
44. As discussed by paragraph 14, the council does not have the skill sets to conduct FRAAs to meet the requirements of the Fire Safety Act. Neither does the council have the skillsets or equipment to undertake BIM surveys. Therefore, the council will need to appoint consultants to carry out the surveys for the Pilot and the Priority Surveying Programme.

45. These consultants would need to be procured and appointed from early 2022. This will allow the council to meet the legislative timelines, as discussed by paragraphs 32 and 33.
46. The challenging timescales do not only relate to the legislation. The market for the competent consultants required is very limited – if the Council does not get to the market early, there will not be enough consultants available and costs will increase.
47. The council is exploring options for the procurement of the surveys.
48. The council will need to split the services between different contractors. This is needed due to capacity problems.
49. It should also be noted that the duration of the contracts will be 12 months or less, this is due to the challenging timescales of the Priority Surveying Programme. The council will be able to charge homeowners for the costs of the surveys – this is because the surveys are legislative and they are needed for the management of the building. A Section 20 consultation will not be needed because the contract lengths are 12 months or less. However, alternative consultation will be carried out with homeowners to provide details of the surveys and the costs.
50. As discussed above, the surveys will show which remediation works are needed and these will be included within the QHIP. It is not possible to comment on the specifics of these costs until after the surveys have been conducted.
51. As surveys are completed, the council will take the following steps for each building. These steps will be delivered by a rolling programme. These will allow the Council to uphold the safety of the building and to receive approval for its Building Safety Cases from the HSE.
  - a. Priority Survey (including FRAA and stock condition surveys).
  - b. Review of fire strategy to reflect any new findings from the surveys
  - c. Preparation of Building Safety Case.
  - d. Scope the required remediation works.
  - e. Consultation with residents and homeowners.
  - f. Tendering and appointment of contractors to deliver the remediation work.
52. Several factors will impact the costs of the remediation works. First, these costs are usually most significant if they relate to either cladding, compartmentation or window panels. The Council do not expect to have any significant costs relating to cladding, but there may be some relating to compartmentation and the window panels. Second, the results from the surveys will explain how much remediation will be needed to reduce the risk rating of the building (e.g. how much is needed to get to a Medium risk rating). The lower the desired risk rating, the more costs there will be

for remediation. Third, there is also the question of when the remediation costs will fall. The council will take a gradual approach to the remediation – this is possible because the fire strategies for the building will mitigate risks to life. It is unlikely that remediation will be urgent because the Council has fire strategies for the blocks. This will help to spread the costs over a longer period of time. However, the specific timings of this gradual approach will depend on the blocks and the remediation required.

53. The costs of the surveys and the remediation will contribute to the existing demands on the existing QHIP commitments and other capital spending. This spending will need to be reviewed continuously to ensure that it is affordable.
54. The remediation works will be delivered by a combination of the new long term alliance contracts (which are due January 2023) and the use of external frameworks. This will provide a balance of delivery routes and ensure best value can be benchmarked. Where appropriate, homeowners will be charged for remediation. Any decisions around charging homeowners will be taken on a case-by-case basis. Homeowners will not be charged if previous works were: not up to standard (e.g. latent defects, warranties, poor installation) or not compliant with regulations (the regulations when the works were completed, rather than the new regulations). This approach reflects the Council's usual approach to such matters.

#### **Other Responses – Fire Safety Act and Building Safety Bill**

55. The Fire Safety Act applies to any residential building with a communal area. The Priority Surveying Programme will only cover High Rise blocks, therefore, future work will be needed to meet the requirements of this legislation. This will include new FRAs and upskilling, allowing the council to deliver these in-house.
56. The Building Safety Bill has requirements around resident engagement (as discussed by paragraph 20). For the Pilot Surveys, the council have delivered a comprehensive engagement plan, as follows:
  - a. Briefings to the Homeowner Forum and the Tenants Forum
  - b. Communications pack sent to residents of the block – which included FAQs and a questionnaire asking them for their views
  - c. Organizing a virtual Q&A session for the residents and attending the block for Q&As too
  - d. Working closely with the Gloucester Grove TMO
  - e. Briefings for Councillors and MPs.
57. Going forward, the council will learn the lessons from the Pilot and deliver the engagement needed to meet the requirements of the new legislation. This will have resource implications for the council.
58. The Building Safety Bill also has requirements around data (as discussed by paragraph 20). The council are working with consultants to develop a

Modern Data Platform for Building Safety. This would bring together the different systems that the council uses to hold data about buildings, allowing the council to meet the new requirements around data and access to this data would be better for officers, Councillors and residents.

59. Building Control is undergoing a service review, this will include responses to the Building Safety Bill.

### **Responses to Other Requirements**

60. As discussed by paragraph 21, whilst the Fire Safety Act and the Building Safety Bill are the most significant changes, the council needs to respond to other new requirements too.
61. During 2019, DLUHC gave councils a directive to ensure that private building owners remove ACM cladding (the cladding that was on Grenfell Tower) from High Rise residential buildings. DLUHC is looking to add non-ACM combustible materials to this Directive too. Several workstreams from the Building Safety Programme are working to meet this directive, this includes surveying, data collection, and the use of the councils' enforcement powers under the Housing Act (2005). DLUHC has praised the council's recent progress with the ACM directive.
62. Planning Gateway 1 was implemented on 1 August 2021. It requires developers to submit a fire statement for High Rise blocks. This statement must outline the specific fire considerations for the block. Planning has responded to this with a Divisional Plan and a Fire Guidance Note.
63. During 2018, the government banned the use of combustible materials from High Rise blocks. These requirements are being met by New Homes and the Priority Surveying Programme will check that these have been met by any recent works to High Rise blocks.
64. EWS1 certification is not a legal requirement; however, it is often needed for the buying and selling of High Rise flats. The council expects to deliver EWS1 where required – not every High Rise block will need the certification, and the Priority Surveying Programme will show this. However, the council needs to develop a further understanding of the costs associated with EWS1. This will be done alongside the Pilot Surveys.

### **Policy implications**

65. The Building Safety Programme will uphold the safety of residential buildings across Southwark, both now and during the future. Therefore, the Programme will help the council to meet Theme 6 of the Fairer Future for All Commitments. This theme states that 'Everyone should have a safe place they are proud to call home. Southwark Council is the biggest social landlord in London and we're committed to maintaining the highest standards, so all our homes are clean, safe and cared for'.

66. Under Principle 2 of its Housing Strategy, the council is committed to 'Demanding the Highest Standards of quality of homes'. The Building Safety Programme will help to meet some of the specifics of this. The Priority Surveying Programme will ensure that the Council continue to 'undertake regular Fire Risk Assessments and ensure any resulting actions are completed or programmed; continue to publish fire risk assessments for blocks 7 storeys and above online with others available on request.' The Programme will also be used to 'quickly implement any of the recommendations that result from the tragic Grenfell Tower fire inquiry.'
67. Principle 4 of the Housing Strategy is 'Empowering residents and communities to have pride and responsibility in the running of their homes and neighbourhoods'. This includes promises to: 'Work with tenants, residents and homeowner groups to find new ways to engage so that more people can have their say'. The engagement strategies (discussed by paragraphs 56 and 57) will reflect these principles by developing and implementing a comprehensive strategy for resident participation, allowing residents to have their say about building safety.
68. Under the Asset Management Strategy, fire safety is a high priority – the Building Safety Programme reflects this. As discussed by the Asset Management Strategy, 'Works required to reduce the risk from the spread of fire and smoke from these Fire Risk Assessments, will usually be integrated into the cyclical programme.'
69. As discussed by paragraph 61, the council's enforcement powers will be used to meet the directives from DLUHC. This relates to The Regulatory Services Enforcement Policy, which sets out the approach to enforcement across several services, including Private Sector Housing. The Private Sector Housing Enforcement Policy sets this out with more details and seeks to ensure that legally compliant standards of housing conditions are maintained in privately-owned residential properties. This includes potentially dangerous exterior cladding impacting the fire safety on residential blocks of flats.
70. The use of the Modern Data Platform (discussed by paragraph 58) is aligned with the Council's corporate strategies around data and platforms. For example, the platform reflects the organisation's 'cloud first' infrastructure approach via Microsoft Azure.
71. The officers who hold the duties of the Building Safety Managers will reflect some of the principles of Community Power (as discussed by the 'Towards a Model of Community Power paper, which is being taken to the December 2021 Cabinet). The officers who hold these duties will need to visit the Council's blocks and be within the community. They will need to listen to residents and respond to their feedback.

## **Community, equalities (including socio-economic) and health impacts**

### **Community impact statement**

72. The Fire Safety Act affects any home with a communal area and the Building Safety Bill covers High Rise blocks. Therefore, the new legislation and the Council's response to it will affect residents of over 45000 homes across 3,588 buildings. Over 9000 of these will be within the Council's 170 High Rise blocks.
73. Due to the directives around the private sector (discussed by paragraph 61), a large number of residents who do not live within council blocks will also be affected. Government figures show that Southwark has the 4<sup>th</sup> highest number of Building Safety Funding applications across England (this fund is the government support for remediation, aimed at those who own or live within private blocks)
74. The Building Safety Programme will uphold the safety of residential buildings across the borough, whether these are council-owned or privately-owned, both now and for the future.
75. Achieving this outcome will lead to some disturbance and financial costs to residents. For example, access to homes will be needed for some of the surveys. There will also be financial costs for the surveys (discussed by paragraph 43) and remediation (discussed by paragraph 54). The Council's resident engagement strategies (discussed by paragraphs 56 and 57) will explain the need for any disturbance and costs and will seek to respond to any concerns that residents raise.

### **Equalities (including socio-economic) impact statement**

76. Section 149 of the Equality Act 2010 lays out the Public Sector Equality Duty (PSED) which requires public bodies when taking decisions, to have due regard to the need to: eliminate discrimination, harassment, victimisation or other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it; foster good relations between those who share a relevant characteristic and those that do not share it.
77. The Building Safety Programme will reflect the relevant duties, especially with regard to vulnerable residents and those with protected characteristics.

78. When surveying and remediating council buildings, particular consideration will be given to the needs of vulnerable residents. This will reduce discrimination and advance equality of opportunity. For example, through the use of Personal Emergency Evacuation Plans (PEEPs), the safety of vulnerable residents can be improved. This will require collaboration from the divisions working across the Programme, such as Asset Management and Residents Services.
79. By developing and implementing an engagement strategy for the borough and for each block, the council will be able to reach out to as many residents as possible – this will give residents, including those who are vulnerable, to report any relevant concerns that they might have. By giving residents the chance to voice their concerns, the council will be able to reduce discrimination and advance equality of opportunity.
80. Those officers who hold the duties of the Building Safety Manager will be expected to develop good relations with residents, but as PSED requires, these officers will also need to foster good relations between those who share a relevant characteristic and those that do not share it.
81. As discussed by paragraphs 43 and 54, homeowners will be charged for the costs of surveys and remediation. The council acknowledges that homeowners have existing costs and it will only charge as appropriate. If the council did not charge any costs to homeowners then tenants would bear an unfair amount of the cost.

### **Health Impact Statement**

82. Where required, the council's social housing have FRAs and Fire Strategies – these are the strategies that help to determine the appropriate response to a fire, depending on the characteristics of the building. Fire Strategies mitigate the health risks around fire and smoke.
83. The Building Safety Programme will allow the council to meet new legislative requirements around FRAs and to update fire strategies as required. Therefore, the council can continue to mitigate the health risks around fire and smoke.

### **Climate Change Implications**

84. Following council assembly on 14 July 2021, the council has committed to considering the climate change implications of any decisions. A motion passed by cabinet in April 2019 commits the council to achieve carbon neutrality by 2030 if possible.
85. Any works conducted for the Building Safety Programme will reflect the goal of reducing the council's carbon emissions.

## **Social Value**

86. When the council procures and appoints the consultants for the Priority Surveying Programme, the necessary consideration will be given to social value, including the London Living Wage, sustainability, the local economy, and employment opportunities.

## **Resource implications**

87. The response to the Building Safety Bill, Fire Safety Act, and other requirements will have significant resource implications for the Council. These are most significant for the Asset Management Division – these implications are discussed by paragraphs 88 to 92. Paragraph 93 discusses the possible requirements for other services.
88. For the Fire Safety Act, there are resource requirements relating to the new FRAs. Consultants will be needed for the short-term and upskilling will be needed for the medium-term.
89. The Building Safety Bill requires the council to recruit officers to meet the duties of 'Building Safety Managers'. These are new duties and they include the day-to-day management of activities relating to the safe management of the council's High Rise buildings and effective communication with the residents of those buildings. It is expected that these duties can be split between different roles.
90. This paper recommends that Cabinet approves the creation of a new Assistant Director role for Building Safety, at either Grade 17 or Grade 18, subject to evaluation. This role will hold the Building Safety portfolio of responsibilities. Noting that Cabinet needs to approve senior leadership roles at grade 17 or higher, subject to appropriate analytical job evaluation, it is anticipated that the Building Safety Leadership role will warrant such seniority within the Council. This Assistant Director role for Building Safety would oversee the new Building Safety structure (the officers who hold the duties of the Building Safety Managers and the Building Safety Programme Lead) and all aspects of Major Works Programmes. Appendix 1 has an organogram which shows the proposed structure of Asset Management, with the inclusion of the Assistant Director Role. It should be noted that this structure is subject to consultation. The Assistant Director would also give the strategic leadership required to deliver the Priority Surveying Programme and other aspects of the Building Safety Programme.
91. The Director of Asset Management will either hold the role of the Accountable Person or the Principal Accountable Person (as defined by paragraph 20). Given that the Director is the only council officer who is qualified to hold either of these roles, the new Assistant Director role (grade to be determined) is needed for the other.
92. The new Assistant Director role would need to coordinate the response of the Asset Management Division with other services, such as Building

Control and New Homes.

93. Due to the need to collect the Building Safety Charge, Homeownership Services may also require additional resources. There may be a need for additional resources to support the resident engagement strategies too.

### **Legal implications**

94. The implications of the Building Safety Bill, the Fire Safety Act, and other legislation have been set out throughout this report. Further legal implications are also noted by paragraphs 107 to 118.

### **Governance**

95. The Building Safety Programme now has a clear governance structure. This is discussed by paragraphs 24 and 25.

### **Financial Implications**

96. There are significant pressures on the HRA revenue and capital accounts, the costs associated with Building Safety will exacerbate these.
97. For the Priority Surveying Programme (including the Pilot Surveys), estimated costs have been discussed above. These are between £10,000,000 and £17,000,000. However, the costs of remediation which follow the Programme are unknown at this stage. The costs of the surveys and the remediation will be included within the QHIP.
98. For the other responses to the Building Safety Bill and the Fire Safety Act, some of the costs are unknown – these are the costs for the upskilling for the new FRAs. Some of the costs around data are being covered by an existing contract, but if there were changes to the Modern Data Platform, there would be additional costs here too. Both the upskilling and the changes to data would need to be covered by the HRA revenue accounts.
99. For the other requirements, there are costs attached to the DLUHC directive about the private sector and to EWS1. For the former, the costs for 2021/2022 are £443,000 – these have been covered by the General Fund. Further actions are needed for these to be included within future budgets. For the latter, the costs are unknown – like the other surveys and the remediation, the costs for EWS1 would be included within the QHIP.
100. The costs relating to Asset Management resources (the officers with the duties of the Building Safety Managers and the Assistant Director role) have been estimated at £2,303,000 per annum. During 2022/23, the costs are expected to be £1,278,000. From 2024/24, the costs will be £2,303,000 per annum. These costs reflect current estimates of the roles required, but further requirements may become apparent. The costs for future years will be determined at a later stage; however, it should be highlighted that many of the roles which relate to the duties of Building Safety Managers will

continue to be required under the Building Safety Bill.

101. The costs for the resources from other service areas (Resident Participation and Homeownership Services) are unknown at this stage. These costs would be added to the HRA Revenue account.
102. Table 4 has a summary of the responses, the specific activities, the costs attached to each, the source of funding and when these costs are expected. The response of the council is still being developed and understood. Consequently, the table has a number of unknowns. It should also be highlighted that there may be additional costs which have not been discussed here. For the current financial year, the expected costs are for the Pilot Surveys only - £100,905. This will add pressure to existing forecasts. Costs for the 2022/23 year will need to be agreed. The costs for the Asset Management resources are being approved through the budget challenge.

**Table 4**

<b>Response</b>	<b>Activities</b>	<b>Estimated Cost (£)</b>	<b>Funding</b>	<b>Year</b>
<b>Priority Surveying Programme</b>	Pilot Surveys	100,905	QHIP	21/22
	Priority Surveys	10,000,000 to 17,000,000	QHIP	22/23
	Remediation	Unknown until survey findings  120,000 per block for Critical Tasks (Contingency)	QHIP	Critical Tasks 22/23 onwards
<b>Other responses to the Building Safety Bill and Fire Safety Act</b>	Upskilling for the new FRAs	TBC after the Pilot Surveys	HRA Revenue	23/24
	Modern Data Platform	Existing costs covered by existing contracts, other costs are unknown.	HRA Revenue	TBC
<b>Responses to other Requirements</b>	DLUHC Directive (Private)	443,000	General Fund	22/23
	EWS1	TBC until after the Pilot Surveys	QHIP	TBC
<b>Asset Management Resources</b>	Building Safety Managers and Assistant Director Role	2,303,000	HRA Revenue	22/23 - £1,278,000, 23/34 - 2,303,000

<b>Response</b>	<b>Activities</b>	<b>Estimated Cost (£)</b>	<b>Funding</b>	<b>Year</b>
<b>Other Resources</b>	Homeownership Services	TBC after more legislative details	HRA Revenue	TBC
	Resident Participation	TBC until after the Pilot Surveys	HRA Revenue	22/23

## **Consultation**

103. Consultations have taken place across the Council, allowing each department to understand the requirements of the new legislation and the responses they need to deploy.
104. Consultation with the Staff and Unions within Asset Management will commence in January 2022 around structures, training and development
105. Using the Partnership Board (as discussed by paragraph 25), consultations with LFB, DLUHC and HSE are ongoing.
106. Consultation with residents has begun for the Pilot Surveys (discussed by paragraph 56). This will continue through the resident engagement strategies.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

107. The report asks cabinet to note the impact of new and proposed fire and building safety legislation and sets out how the council proposes to prepare for implementation.

### **The Fire Safety Act 2021**

108. The Fire Safety Act received royal assent on 29<sup>th</sup> April 2021. It is a short piece of legislation that amends the Regulatory Reform (Fire Safety) Order 2005 (RRO 2005) by clarifying the applicability of the Order to specific parts of residential buildings, notably to external walls and anything attached thereon.
109. Section 1 of the Act clarifies that for any building containing two or more sets of domestic premises, the RRO 2005 applies to the building's structure and external walls and any common parts, including the doors between domestic premises and common areas. It also clarifies that references to external walls in the RRO 2005 include 'doors or windows in those walls' and 'anything attached to the exterior of those walls (including balconies).

- 110. The Act also enables the government to issue risk-based guidance, which can be referred to as proof that a responsible person has either complied or failed to comply with the requirements of the RRO. This applies only to buildings in England containing two or more sets of domestic premises.
- 111. The Act will complement the existing powers local authorities have to take enforcement action against building owners and managers under the Housing Health and Rating System provided for in the Housing Act 2004 and the Building (Amendment) Regulations 2018. This regulation banned the use of combustible materials within external walls and certain attachments to the external walls, of any new building with a storey of at least 18 metres in height. It applies where the building contains at least one dwelling, residential accommodation for the treatment, care or maintenance of individuals or rooms for residential purposes such as school dormitories and student accommodation.
- 112. The Act came into force partly on 29 April 2021. Regulations will bring the rest of the Act into force. The key provisions of the Act (sections 1 and 3) are not likely to be brought into force until the end of 2021 or early 2022.

### **Building Safety Bill**

- 113. It is a Bill ‘to make provision about the safety of people in or about buildings and the standard of buildings, to amend the Architects Act 1997, and to amend provision about complaints made to a housing ombudsman’. It sets out a new regulatory regime aimed at ensuring the safety of residents in residential buildings and aims to ensure ‘greater accountability and responsibility for fire and structural safety issues throughout the lifecycle of buildings in scope of the new regulatory regime for building safety’
- 114. The bill runs to 218 pages, comprising 6 parts, 147 sections and 9 schedules. Table 5 sets out and describes each section of the bill.

**Table 5 – The Building Safety Bill**

Part and Title	Description
Part 1 – Introduction	Provides an overview of the Bill.
Part 2 – The Regulator and its Functions	Gives the Building Safety Regulator (BSR) a statutory footing within the Health and Safety Executive (HSE) and identifies the risks that the BSR will manage. The BSR will secure the safety of people in or around buildings and seek to improve the standards of buildings. The BSR’s functions will include functions under the Building Safety Act, the Building Act and functions under the Health and Safety Act. Staff to support the BSR will be drawn from local authorities and Fire and Rescue Services.

Part 3 – Building Act 1984	<p>Makes amendments to the BA 1984 as it applies to England and Wales;</p> <ul style="list-style-type: none"> <li>• Enabling the government to decide by way of secondary legislation which buildings are included in the scope of the regime.</li> <li>• Setting out the provisions for the new regulatory regime during the design and construction phase for higher-risk buildings</li> <li>• Providing for the registration of building inspectors and building control approvers and seeking to regulate and improve competence levels in the building control sector</li> <li>• Remove discretion such that where building work has not commenced within 3 years of the deposit of plans, the plans will be considered null and void.</li> </ul>
Part 4 - Higher-risk buildings	<p>Provisions relating to procedures and control of occupied Higher Risk buildings in England. It places duties on the Accountable Person and Building Safety Managers in relation to building safety risks in their building. This includes registration and certification, appointment of Building Safety Managers and their duties including the provision of information and engagement with residents, The regulator will have a duty to enforce provisions concerning higher risk buildings.</p>
Part 5 - Supplementary and General	<p>Includes provisions:</p> <ul style="list-style-type: none"> <li>• relating to service charges in respect of remediation works There will be a charge associated with duties under the Act which can be passed onto leaseholders with leases of over 7 years or more in high rise multi occupied buildings. The charge will apply to leaseholders whether their landlord is a private landlord, local authority or housing association. Landlords may be required to seek other cost recovery avenues before passing costs onto leaseholders.</li> <li>• Duties relating to work to dwellings</li> <li>• catering for changes to the (RRO 2005)</li> <li>• for the establishment of a New Homes Ombudsman scheme</li> <li>• for the power to regulate construction products</li> <li>• on disciplinary matters relating to Architects,</li> <li>• removing the "democratic filter" that requires social housing residents to refer unresolved complaints to a "designated person" or wait eight weeks before they can access redress via the Housing Ombudsman.</li> </ul>

Part 6 – General	Covers miscellaneous provisions, including: <ul style="list-style-type: none"> <li>- the liability of officers of bodies corporate;</li> <li>- reviewing the regulatory regime; and</li> <li>- the Bill's jurisdictional scope</li> </ul>
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115. The detail supporting the statutory provisions will be provided by regulations and guidance, which are likely to be developed as the bill progresses and after it receives Royal Assent. Sets of draft regulations have already been published as follows: - The Higher-risk buildings Descriptions Regulations; Duty-holder regulations; The Architects Fees for Services Regulations; The Building Restricted Activities Regulations; The Building Safety Fees Regulations; The Construction Products Regulations, The Building Higher Risk Buildings (England) Regulations; The Higher Risk Buildings Principles for Management of Risk Regulations
116. Under the MHCLG transition plan, the bill is expected to receive Royal Assent within approximately 9-12 months (of publication) with the first round of provisions coming into force within 6-12 months of the Bill receiving Royal Assent and the bulk of the new regulatory regime coming into force within 12-18 months of Royal Assent. Despite this proposed timetable, there is uncertainty as to when the bill's proposals will come into effect. Given the complexities of the provisions, its progress through the law making process may be subject to delays.
117. Certain obligations have come into force earlier. The requirements of the 'Gateway 1' process, relating to construction and major refurbishment of higher-risk buildings, which forms part of the current planning process is implemented by secondary legislation and statutory guidance which amends the Town and Country Planning Act 1990 and came into force on 1 August 2021. Gateway 1 seeks to ensure that fire safety matters are considered at the planning application stage for relevant buildings and requires applicants to submit a fire statement to the planning authority confirming that fire safety issues have been addressed.
118. As noted in the report, preparation for, and compliance with, the new regime will require considerable resources.

### **Strategic Director of Finance and Governance**

119. The Strategic Director of Finance and Governance notes the contents of the report and the onerous responsibilities conferred by the Building Safety Bill on both local authority and private sector landlords. This also needs to be seen in parallel with the requirements of the Fire Safety Act 2021.
120. For Southwark, this represents a seismic endeavour and requires significant financial commitment given the unique size and nature of the council's housing stock, with 170 in-scope high-rise buildings (the highest

number in England), and a significant number of buildings that also require further investigation, albeit deemed to be of low or moderate risk outside the scope of the legislation.

121. The report sets out indicative costings to undertake the building surveys (based on a pilot survey currently underway). The two options outlined have considerably different cost implications, ranging from c. £10m to £17m, the long-term merits of each need to be carefully evaluated before a decision and commitment is made. In addition, there are new and additional staffing requirements needed within the council's Asset Management division to undertake the work and ensure compliance with the legislation and within the timeframe specified of April 2024. Revenue and capital funding commitments totalling £6.7m currently form part of the HRA budget proposals for 2022-23 to address these needs (based on the lower of the two survey cost options). In addition, there are likely to be other organizational/administrative costs arising across other parts of the council which are yet to be quantified as the full requirements of the regulations become clearer.
122. The report also outlines the potential procurement difficulties arising from the compressed timetable to undertake the surveys and the adverse financial implications that this may create in relation to Section 20 RTB provisions and the council's ability to charge leaseholders under the terms of their lease. Clearly, given the substantial costs identified here, it is incumbent on the council to ensure full cost recovery wherever possible to mitigate any potential cross-subsidy by tenants.
123. Notwithstanding the critical importance of these new duties to enhance residents' safety, they create a substantial additional financial pressure on already constrained resources, particularly capital, both for the initial surveys and moreover the cost of remediation works arising, which is an unknown. The council is currently undertaking a wholesale review of its asset management strategy and this must be the council's highest priority, which is likely to be at the expense of other less-essential programmes over the medium-term. As previously reported, capital resources are under extreme pressure and borrowing to support the QHIP and New Homes programmes continues to rise at an unprecedented rate with consequent revenue financing impact on the HRA, which cannot be sustained over the long-term.
124. The council's response to the provisions of the Building Safety Bill and Fire Safety Act continues to develop at pace and the costs and commitments arising will be kept under review and updated as better information comes to hand and reported as appropriate.

#### **Director of Employee Engagement (Interim)**

125. This report identifies significant new responsibilities that will fall on the Council as part of the passage of the Building Safety Bill.

126. As detailed, the council will need to increase its staffing capacity and capability (with regard to specific requirements) of key roles detailed in the legislation.
127. Noting the importance of these new roles with regard to the requirements and the transition programme to ensure compliance, recommendation 4 seeks approval from Cabinet to create an Assistant Director role, at an appropriate level of seniority within the Council.
128. The authority to create roles at grade 17 or higher resides with full cabinet. It envisaged that the new role when evaluated is likely to achieve this grade in terms of the job size of the role.
129. In terms of building capacity, the report identifies the new roles will need to have appropriate levels of knowledge and experience, to undertake the 'building safety manager' and other roles as described in the legislation.
130. The council will draw up job roles and person specification that meet the requirements of the roles and by use of industry, benchmarking will seek to ensure Southwark's remuneration offer for these roles is competitive.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Review of Grenfell Inquiry Phase 1 Recommendations	Cabinet, February 2020	Michael Scorer, Strategic Director, Housing and Modernisation
<b>Link (please copy and paste into browser):</b> <a href="https://moderngov.southwark.gov.uk/documents/s86915/Report%20Review%20of%20Grenfell%20Inquiry%20Phase%201%20Recommendations.pdf">https://moderngov.southwark.gov.uk/documents/s86915/Report%20Review%20of%20Grenfell%20Inquiry%20Phase%201%20Recommendations.pdf</a>		
Building Safety and Cladding Report	Housing and Community Engagement Commission Scrutiny	Simon Holmes, Head of Engineering
<b>Link (please copy and paste into browser):</b> <a href="https://moderngov.southwark.gov.uk/documents/s93588/Report%20Building%20Safety%20and%20Cladding.pdf">https://moderngov.southwark.gov.uk/documents/s93588/Report%20Building%20Safety%20and%20Cladding.pdf</a>		

## APPENDICES

No.	Title
Appendix 1	Proposed Organogram for Asset Management

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Stephanie Cryan, Council Homes and Homelessness	
<b>Lead Officer</b>	Michael Scorer, Strategic Director of Housing and Modernisation	
<b>Report Author</b>	Nick Saunders, Business Transformation Project Officer	
<b>Version</b>	Final	
<b>Dated</b>	25 November 2021	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>	25 November 2021	